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FILED & ENTERED

MAY 04 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY cargill DEPUTY CLERK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:

GUSTAVO BRITO,

Debtor.

CASE NO. 6:14-bk-22236-MH

Chapter 13

**ORDER DISMISSING CHAPTER 13
CASE**

Hearing Date

Date: April 26, 2018

Time: 11:00 a.m.

Courtroom: 303

Judge: Hon. Mark D. Houle


1 The continued hearing on the Motion to Dismiss Chapter 13 Case (“Motion”)
2 brought by Creditor California Department of Tax and Fee Administration was held
3 on April 26, 2018, at 11:00 a.m., the Honorable Mark Houle, United States
4 Bankruptcy Judge, presiding. Appearances were waived. The court, having
5 considered the Motion and declarations submitted in support thereof, no opposition
6 having been made, for the reasons stated in the court’s tentative ruling, attached
7 hereto, and good cause appearing,

8 IT IS HEREBY ORDERED that:

- 9 1. Cause exists for dismissal pursuant to 11 U.S.C. § 1307(c)(1) and
10 (c)(6) and the Motion’s request for dismissal is granted;
11 2. The Chapter 13 case is dismissed.

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26 Date: May 4, 2018

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28 Mark Houle
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 26, 2018

Hearing Room 303

11:01 AM

6:14-22236 Gustavo Brito

Chapter 13

#57.00 CONT Motion to Dismiss Case for Failure to Make Plan Payments

From: 3/22/18, 4/19/18

EH__

Docket 71

Tentative Ruling:

04/26/2018

The hearing on the Motion was continued for proper service on the Debtor. A Notice of Continued Hearing correcting the prior service error was filed on March 26, 2018, and the Debtor has failed to file any opposition or response which the Court deems as consent to the granting of the Motion under LBR 9013-1(h). Based on the prior tentative ruling, the Court is inclined to GRANT the Motion and dismiss the case for non-payment of post-petition tax liabilities.

APPEARANCES WAIVED. Movant to lodge an order attaching both of this Court's tentative rulings as an exhibit.

3/22/18

BACKGROUND

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 26, 2018

Hearing Room 303

11:01 AM

CONT... Gustavo Brito

Chapter 13

On September 30, 2014, Gustavo Brito ("Debtor") filed a Chapter 13 voluntary petition. On November 20, 2014, Debtor's Chapter 13 plan was confirmed. The mandatory Chapter 13 form plan contains a provision (Section V.H) which states: "The Debtor will pay timely all postconfirmation tax liabilities directly to the appropriate taxing authorities as they become due."

Since confirmation the Trustee has filed three motions to dismiss, all of which were ultimately resolved. Additionally, the Chapter 13 plan has been modified once. On February 23, 2018, the California Department of Tax & Fee Administration ("CDTFA") filed a motion to dismiss or convert to Chapter 7 on the basis that Debtors had not paid their postconfirmation taxes. The Court notes that the motion was served on Debtors' attorney, but was not served on Debtors.

DISCUSSION

The Court will continue the matter for CDTFA to serve the motion on Debtors.

Regarding the merits, the Court notes that 11 U.S.C. § 1307(c)(6) provides for dismissal or conversion for cause, which is defined to include "material default by the debtor with respect to a term of a confirmed plan." Here, the Court notes that Debtors' confirmed plan provided that all postconfirmation tax liabilities were to be timely paid. CDTFA has provided evidence that Debtor has accrued \$19,888.54 in post-petition tax liabilities which constitutes a material default satisfying § 1307(c)(6). Because Debtors do not appear to have meaningful unencumbered, unexempt assets, this Court would be inclined to dismiss the case rather than convert it to Chapter 7.

TENTATIVE RULING

The Court is inclined to CONTINUE the matter to April 19, 2018 at 12:30 p.m. for

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 26, 2018

Hearing Room 303

11:01 AM

CONT... **Gustavo Brito**
proper service of the motion on Debtors.

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gustavo Brito

Represented By
Freddie V Vega

Movant(s):

California Department of Tax and

Represented By
Suman Mathews

Trustee(s):

Rod Danielson (TR)

Pro Se